Q&A With Seyfarth Shaw's Rebecca Woods

Law360, New York (March 19, 2013, 2:41 PM ET) -- Rebecca Woods is a commercial litigator in the Washington, D.C., office of Seyfarth Shaw LLP.

She represents companies in matters in insurance coverage, unfair competition, trade secret misappropriation and other intellectual property theft, business torts, construction litigation and real estate matters, including those involving defaults and enforcement of guarantees.

Q: What is the most challenging case you have worked on, and what made it challenging?

A: The most challenging case I've worked on is still ongoing, so it cannot be identified. It involves complex, competing claims; there are almost a score of attorneys on the other side; there are third-, fourth- and fifth-party claims; and it is venued in a jurisdiction that is unused to such gnarly, complicated cases.

To top it off, we represent the plaintiff (self-pay), so the challenge has been acute to bring a very strong case and maintain it over the course of four-plus years in a way that works with the client's business needs and expectations. Nothing has been simple or standard in this lawsuit, and we have handled it with a partner and an associate, so the financial constraints have added to its complexity.

Q: What aspects of your practice area are in need of reform and why?

A: I am a commercial litigator, and there are multiple aspects of reform that are needed. First, discovery requirements and what it takes to satisfy them need to continue to evolve in this electronic age of seemingly infinite, and certainly duplicating, emails and other electronic documents. When multiple custodians at a large corporation might have responsive documents, the client could be looking at $50,000 to $100,000 in cost just to respond to discovery (which might be occasioned by a meritless lawsuit that barely cleared the motion to dismiss standard). Computer-assisted review is making some headway but is still pricey and uncertain in the scope of its acceptance by courts.

Second, the bar for being able to file suit at a whim and clear even the U.S. Supreme Court's "higher" Twombly/Iqbal standards is still too low. The transaction cost for filing suit is low, and the ability to clear the motion to dismiss hurdle is low. Then, defendants are caught in meritless litigation with extensive discovery requirements that cost orders of magnitude more than what many cases are worth. Courts have tried to address these issues, but technology and its consequent burdens have swung the pendulum very far in the plaintiffs' bar's direction.

Q: What is an important issue or case relevant to your practice area and why?

A: Ethics and integrity are important to commercial litigation. Many lawyers are paid by insurers to defend policyholders. While those insurers attempt to manage those matters in some ways, the reality is that they cannot manage their outside counsel in the way that other private entities do, lest they risk bad faith claims (e.g., by allegedly limiting the defense counsel's resources).

Insurers try to manage these costs by hiring low-cost counsel, who claim a low hourly rate but who manage the file in a way that is not only inefficient but works to their own advantage (i.e.,

“working the file”). On the other side, there are litigants, frequently sensible commercial entities, who seek a reasonable resolution but cannot get one because a reasonable, expeditious resolution is not in the interest of a firm that earns its money on the hourly basis.

Q: Outside your own firm, name an attorney in your field who has impressed you, and explain why.

A: Murray Fogler, now at Beck Redden [has impressed me]. Murray was opposing counsel in a matter I handled seven years ago, and he was consistently gracious, civil, ethical and thoughtful. We engaged in hard-fought litigation, but it was always about the merits, never gamesmanship or shady tactics. If more lawyers were like him, lawyer jokes would make no sense.

Q: What is a mistake you made early in your career, and what did you learn from it?

A: Thinking that the practice of law is about the pursuit of truth – that is, who is right and who is wrong. In my first year of practice, we represented a company that was being sued for allegedly violating a patent (we now call them patent trolls). After we researched, we realized two things: we were solidly “in the right,” and it would cost far, far more to litigate the matter to prove the truth than it would to agree to the one-time “license” agreement offered by the patent troll.

So, the client took the economically rational approach and settled the case. It was an early lesson that litigation is not always about truth but is instead very often about business, money and disruption (for business sake). Litigation for these purposes is not necessarily a bad thing, and “truth” can be a powerful tool in the course of litigation. But it is frequently not the outcome of litigation, nor does it trump strategy, business considerations or how a litigator guides their client through litigation.

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